

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

HOWARD KEVIN KNUSSMAN, *et al.*, *

Plaintiffs, *

v. * Civil Action No. AMD-95-1255

STATE OF MARYLAND, *et al.*, *

Defendants. *

* * * * * * * * * * * * * * *

DEFENDANTS' MOTION FOR ORDER SETTING BRIEFING SCHEDULE

The defendants, by their attorneys J. Joseph Curran, Jr., Attorney General, Maureen M. Dove, Deputy Attorney General, and Betty Stemley Scionion and William F. Brockman, Assistant Attorneys General hereby submit this Motion for Order Setting Briefing Schedule for the defendants' response to, and the plaintiffs' reply memorandum in support of, the plaintiffs' Fee Petition (on Remand), and for reasons state as follows.

1. In late January, the Court held a telephone conference with counsel for the parties. The Court directed that the plaintiffs submit briefing with respect to the calculation on remand of their request for attorney's fees on or before March 12. The attorney for the defendants who participated in the conference recalls that the Court suggested a period of approximately 24 days for the defendants' response. No formal order has been entered with respect to the schedule for the parties' briefing.

2. The plaintiffs filed their Fee Petition (On Remand) on March 12, 2004. In subsequent conversations, counsel for the plaintiffs has stated his belief that the defendants'

response is due in accordance with Local Rule 105.2, *i.e.* 14 days after filing of the petition, plus three days to account for its delivery by mail. Using this timeframe, counsel for the plaintiffs contends that the defendants' response is due March 29, 2004.

3. The plaintiffs' March 12 Fee Petition (On Remand) was accompanied by a certificate of service stating that it was served on all counsel, and that “[c]opies, including exhibits, were also served via first-class mail. The accompanying Notice of Filing of Lengthy Document similarly certified that “within 24 hours of filing this Notice, I will serve paper copies of the [petition and exhibits] on all counsel.”

3. On March 18, after failing to receive the exhibits to the petition, undersigned counsel attempted to contact plaintiffs' counsel to obtain the service copies and to discuss an appropriate period within which to prepare the defendants' response. On March 19, having received no reply, undersigned counsel attempted to contact the attorney who had electronically filed the petition and made the certifications regarding service. Plaintiffs' counsel returned the telephone messages the following business day, March 22, and on March 23, undersigned counsel and plaintiffs' counsel spoke directly.

4. On March 23, plaintiffs' counsel explained that service of the exhibits had been made on Assistant Attorney General Betty Stemley Scionix only, and asked that copies be obtained from her because of the expense of making additional copies for other defense counsel. In accordance with Local Rule 105.9, undersigned counsel sought the consent of plaintiffs' counsel for an enlargement of time within which to file the defendants' response to the petition. Plaintiffs' counsel responded that he would consent to an enlargement of

time, allowing the response to be filed on or before April 6,¹ but could not consent to a longer period, because doing so would not leave enough time to prepare the plaintiffs' reply before April 19. He explained that he would be unable to work on the reply between April 19 and April 30. Undersigned counsel proposed that any enlargement of time for the defendants' response be incorporated in a briefing schedule that also set a date for submission of the plaintiffs' reply that would accommodate the schedule of plaintiffs' counsel.

5. On March 24, undersigned counsel obtained copies of the voluminous exhibits to the plaintiffs' petition and provided a copy to Deputy Attorney General Maureen Dove, who has been acting as lead counsel during the appeal and remand phases of this case and who receives mail at the same address as undersigned counsel. On March 25, plaintiffs' counsel informed defense counsel that a revised version of the portion of the exhibits showing Mr. Cockey's time entries would be submitted shortly.

6. Because of the press of other business, the conflicting schedules of defense counsel, and the voluminous nature of the exhibits to the petition, the defendants will not have an opportunity to prepare an adequate response within either 17 days or 24 days of the March 12 filing of the petition. Counsel for the defendants believe that an enlargement of time until April 22 will permit them to adequately review the plaintiffs' petition and accompanying exhibits and to prepare a response. The defendants propose that the plaintiffs'

¹If counsel for the defendants was accurate in her recollection of the late January telephone conference, and if three days are allowed for service by mail, the defendants' response would not be due until April 8 under the schedule contemplated by the Court.

reply be submitted on or before May 14 to accommodate the schedule of plaintiffs' counsel and avoid any prejudice to the plaintiffs.

WHEREFORE, for the foregoing reasons, the defendants respectfully request that this Court enter an order setting a briefing schedule pursuant to which the defendants' response to the plaintiffs' March 12, 2004 petition will be due on or before April 22, 2004 and the plaintiffs' reply will be due on or before May 14, 2004.

A proposed order is attached.

Respectfully submitted,

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/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of March 2004, a copy of the foregoing Motion for Order Setting Briefing Schedule was served electronically on all counsel.

/s/

William Brockman